

GAHC010211062015



2026:GAU-AS:1409

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./348/2015

SMTI DIPANNITA JAISWAL
W/O SRI SANJEEV JAISWAL R/O KHARGHULI, GUWAHATI-4, P.S. LATASIL
DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM and ANR

2:SMT. DIPANNITA MUKHARJEE
W/O MD. MUKTAR HUSSAIN KHAN R/O LIG-2/5
HATIGAON BORSOJAI HOUSING COMPLEX
OLD
PRESENTLY KNOWN AS BAKULBAN HOUSING UNDER P.O. and P.S.
HATIGAON
GUWAHATI-38
IN THE DIST.OF KAMRUP
ASSAM

Advocate for the Petitioner : MS.B BORA, MS.P PATHAK,MS.N CHOUDHURY,MR.M BORA,MR.A K BHUYAN

Advocate for the Respondent : MR.P BORAH-2, PP, ASSAM,MR. G CHOUDHURY(R-2),MR.A K HALOI(R-2),

B E F O R E
HON'BLE MRS. JUSTICE MITALI THAKURIA

Date on which judgment is reserved : **04.12.2025**

Date of pronouncement of judgment : **04.02.2026**

Whether the pronouncement is of the operative part of the judgment? : N/A.

Whether the full judgment has been pronounced? : Yes.

JUDGMENT & ORDER (CAV)

Heard Mr. A.K. Bhuyan, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent No.1 and Mr. G. Choudhury, learned counsel appearing for the respondent No.2.

2. This is an application under Section 482 of the Cr.P.C praying for quashing of the impugned proceeding drawn under Section 500/34 of the Indian Penal Code, being Complaint Case No. 4285^C/2013 and pending in the Court of learned Sub-Divisional Judicial Magistrate-I, Kamrup (M) at Guwahati and issued process against the present petitioner.

3. In brief the case of the petitioner is that the petitioner is the Chairman cum Managing Director of a Company, namely, M/s. Brahmaputra Tele Production Pvt. Ltd., which is running a T.V. Channel namely, the DY 365 and the petitioner is looking after the general administration of the company. It is submitted by the petitioner that a summons was received in the office of the petitioner, whereby

she was asked to appear before the Court of learned Sub-Divisional Judicial Magistrate- I, Kamrup (M) at Guwahati. From the Summons it has come to the notice of the petitioner that a Complaint Case being C.R. Case No.4285^C/2013 has been registered under Sections 499/500/501/502/34 of Indian Penal Code, 1860 and by the impugned order dated 31.07.2014, the learned Trial Court was pleased to take cognizance of offence under section 500/34 of Indian Penal Code and issued process against the petitioner, fixing 12.09.2014 for appearance.

4. Being aggrieved and dissatisfied with the drawing up of the proceeding against the present petitioner in the instant case i.e. Complaint Case No. 4285^C/2013, the petitioner has preferred the instant petition.

5. It is contended by Mr. A.K. Bhuyan, the learned counsel for the petitioner that no offence under section 500/34 of the Indian Penal Code is made out against the present petitioner and there is no statement that it is the petitioner who defamed Opposite Party No.2 and as such the impugned order dated 31.07.2014, taking cognizance is bad in law and the proceeding is liable to be set aside and quashed. It is submitted by Mr. Bhuyan, the learned counsel for the petitioner that the petitioner is the Managing Director of the company and she has nothing to do with the programmes that are broadcasted by the news channel and for the programmes broadcasted by the Television channel is the sole responsibility of the Editor-in-Chief of the Television Channel and as such issuing of process against the petitioner is bad in law and is liable to be set aside and quashed. Mr. Bhuyan, the learned counsel for the petitioner further submitted that under the Press Laws, it is always the Editor who controls the

selection of the matter for the purpose of broadcasting is responsible and the Managing Director of the company cannot be fastened with criminal liability and as such order of taking cognizance against the petitioner is bad in law and is liable to be set aside and quashed.

6. Mr. A.K. Bhuyan, the learned counsel for the petitioner further submitted that no specific allegation has been brought against the present petitioner in the complaint petition nor there is any statement as to how the present petitioner is involved in broadcasting the said news item or whether she has any involvement in selection of the news item, which is stated to be defamatory one. The present petitioner is working as the Chairman cum Managing Director of the Company and it is only the editor who is responsible or who controls the selection of the news item or any matters for the purpose of broadcasting and as a Managing Director, the present petitioner has no role in selection of any news item nor she has any control over any matter which is to be broadcasted in the news channel. More so, from the plain reading of the complaint as well as the statement made by the three CWs, under Section 202 of the CrPC, at the time of enquiry did not reveal any materials against the present petitioner that she was also aware about the news items, which were broadcasted in the news channel or as a Managing Director, she can also be roped in the present case. He further submitted that it is the cardinal principle of the criminal jurisprudence that there was no vicarious liability unless the statutes specifically provides for it. To prove a case under Section 499/500 of the IPC, there has to be some statements against the present petitioner, who is the Managing Director to held that she was also responsible for broadcasting the said news item, as it is well known that as a Managing Director, the selection of news item or broadcasting of any materials are not directly under the control and supervision of any

Managing Director. It is the Editor-in-Chief/Editor who is responsible for the selection of news items as well as broadcasting of the same in any news channel.

7. As such, Mr. Bhuyan, the learned counsel for the petitioner further submitted that there is no prima face case at all to take cognizance against the present petitioner under Section 500 of the IPC and accordingly, the case against the present petitioner is liable to be quashed. In support of his submission, Mr. A.K. Bhuyan, the learned counsel for the petitioner relied upon the following decisions of this Court as well as of Kerala High Court:

(i) Criminal Petition No.556/2012 (Sri Pranoy Bordoloi and another vs. State of Assam and another);

(ii) Criminal Petition No.33/2015 (Smti Dipannita Jaiswal vs. State of Assam and another); &

(iii) CrI. MC No.5519/2019 (Fr. Joseph Kuzhinjalil and another vs. Visalakshi and another).

8. Citing the above referred judgments, it is further submitted by Mr. Bhuyan, the learned counsel for the petitioner that from the order of cognizance dated 31.07.2014, it is also seen that the learned Trial Court below had after recording the statement under Section 202 of the CrPC of Court witnesses, had simply issued the process taking cognizance of the offence against all the accused persons only with the observation that there is sufficient materials to proceed with the case against all of them under Section 500/34 of the IPC. But there is no statement at all that at the time of passing the order, any electronic record etc. were produced before the learned Trial Court below as it is the allegation that new items were broadcasted in the news channel where the petitioner was discharging her duty as the Managing Director.

9. The learned counsel for the petitioner emphasized in para 13 and 19 of the judgment passed in Criminal Petition No.556/2012 (Supra), wherein it has been held by a coordinate Bench of this High Court as under:

“13. From the principles that are laid down in the above line of decisions, it is manifest that vicarious liability of the Managing Director, or a Director, or an employee of a juristic entity like a company can arise provided there is any provision in the statute. There is no such provision in the Indian Penal Code to bring in the concept of vicarious liability automatically when it is evident that the alleged offence was done not in his personal capacity and it was done in the course of his duty on behalf of the company in which he is in employment.

19. Going by the projections made in the complaint and the expressions provided for in the aforesaid statutes, the alleged defamatory news item or its transcript would fall in the category of ‘documentary evidence’, more particularly, within the expression ‘electronic records’. Such electronic records can be proved either by primary evidence or by secondary evidence, as per conditions laid down in the Evidence Act. The criminal prosecution has been launched against the accused persons on the premise that the alleged news item broadcasted through the television channel, DY365 is defamatory in nature. During the course of enquiry, the said alleged defamatory news item, which, for the complainant, is the foundation for launching the criminal prosecution, has not been produced before the Court for its examination. It is not even mentioned in the statement of the complainant that the said news item would be produced at a subsequent point of time. Nothing has been said by the complainant that he made any effort to obtain the alleged defamatory news item from the rightful source and had failed in his attempts. Thus, the alleged defamatory news item was not before the learned trial court at the time of taking cognizance of the offence and issuance of the process against the accused persons to arrive at a prima facie opinion that the same was defamatory in nature”.

10. In the other two judgments which are also relied by the learned counsel for the petitioner expressed the same view that in an ordinary course, the Editor-in-Chief/Editor is responsible for selecting the news items and the Managing Director has no direct role in selection of the news items and therefore, the criminal prosecution alleging the defamation against the Managing Director would not succeed at prima facie. Accordingly, Mr. Bhuyan, the learned counsel for the appellant submitted that it is a fit case where in the case against the present petitioner i.e. Complaint Case No. 4285^C/2013 which is pending in the Court of learned Sub-Divisional Judicial Magistrate-I, Kamrup (M)

at Guwahati is liable to be set aside with cost by invoking the extra ordinary power under Section 482 of the CrPC.

11. Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent No.1 submitted that the complaint petition is to be read as a whole and being the Managing Director of the said news channel, the present petitioner is equally liable for the broadcasting or telecasting the news item, which is stated to be defamatory for the respondent No.2. Mr. Sarma further submitted that in para 14 of the said complaint, the allegation is also brought against the present petitioner and from the statement made in para 14 it also reveals that the electronic record which is commonly called as master spool is in the possession of the accused persons and accordingly the complainant prayed for a direction to produce the same before the Court. He further submitted that there is *prima facie* case against the present petitioner in the complaint and it is not a case that the complaint does not disclose a case against the present petitioner to set aside or quash the proceeding against her. Accordingly Mr. Sarma submitted that this is not at all a fit case to quash the proceeding against the present accused petitioner at this stage and the learned Court below had taken cognizance against her after perusal of the complaint petition as well as the statement made by the court witnesses, who were accordingly examined under Section 202 of the CrPC.

12. Mr. G. Choudhury, the learned counsel appearing for the respondent No.2/complainant also submitted that the allegations are also brought against the Managing Director and all other accused persons and it is specifically mentioned that the accused Nos. 1, 2, 3, 4, 5, 6 & 7, after prior meeting of mind and in furtherance of common intention, broadcasted the defamatory news

item, with the intention to defame the present petitioner which seriously harmed the reputation, prestige and her social image. Accordingly, Mr. Choudhury, the learned counsel for the respondent No.2 submitted that there is a *prima facie* case against the present petitioner to take cognizance and hence, the learned trial Court below had rightly passed the order of taking cognizance against the present petitioner along with other accused persons and hence, it is not at all a fit case to quash the proceeding against the present petitioner, invoking the power under Section 482 of the CrPC, as prayed for.

13. Hearing the submissions made by learned counsel for both sides, I have also perused the case records and the annexures filed with the present petition.

14. From the order of cognizance passed by the learned trial Court below, it reveals that no discussion has been made as to how the Court was satisfied regarding the *prima facie* case against all the accused persons including the present petitioner to take cognizance. Further, it is also seen from the statement of the court witnesses as well as the complaint that no electronic records or electronic document was produced before the learned trial Court below at the time of taking cognizance against all the accused persons. Further it is also seen that no specific allegation was brought in the complaint petition against the present petitioner who is discharging her duty as the Managing Director of the said company. Except one statement made in the complaint that all the accused persons with prior meeting of mind and in furtherance of common intention had broadcasted the said news item which defamed the complainant in the society as well as her reputation. It is also evident from the order passed by the learned trial Court below that the alleged defamatory news item or its transcript which is stated to be the foundation of such criminal prosecution was also not produced

before the Court at the time of taking cognizance against the present petitioner.

15. As already relied by a coordinate Bench of this Court in case of Criminal Petition No.556/2012 (Supra), the Hon'ble Supreme Court in the case of ***Maksud Saiyed vs. State of Gujarat***, reported in **(2008) 5 SCC 668**, has observed in para 13 of the said judgment as under:

“13. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the Code of Criminal Procedure, the Magistrate is required to apply his mind. Indian Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company when the accused is the Company. The learned Magistrate failed to pose unto himself the correct question viz. as to whether the complaint petition, even if given face value and taken to be correct in its entirety, would lead to the conclusion that the respondents herein were personally liable for any offence. The Bank is a body corporate. Vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. Statutes indisputably must contain provision fixing such vicarious liabilities. Even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability”.

16. But here in the instant case, it is seen that the present petitioner who being the Managing Director of the company cannot manifest under the vicarious liability as there is no such allegation brought against the present petitioner regarding her involvement in telecasting/broadcasting the said news item, against the present respondent No.2, which is stated to be defamatory and unless there is no direct allegation against the present petitioner, she cannot be roped in this case under the concept of vicarious liability. More so, it is the Editor/Editor-in-Chief who is the controlling authority or responsible for selection of any news item or any matter to be broadcasted in the news channel and in all the cases, the Managing Director cannot be fastened with the criminal liability, unless there is any specific allegation brought against the Managing Director showing his/her involvement in the alleged offence.

17. In the case of *Managing Director, Castrol India Ltd. Vs. State of Karnataka*, reported in **(2018) 17 SCC 275**, the Hon'ble Apex Court held that in absence of specific averment made in complaint alleging role of Director/Managing Director in commission of offence, criminal proceeding cannot continue. In the instant case, it is also seen that at the time of taking cognizance, the learned trial Court below has not applied his mind. Applying the ratio laid down by the Hon'ble Apex Court, it is held that in absence of any specific allegation against the present petitioner, who is discharging her duty as a Managing Director of the company, cannot be allowed to continue and the same is accordingly liable to be set aside and quashed, invoking the power conferred under Section 482 of the CrPC.

18. Accordingly, the impugned proceeding drawn under Section 500/34 of the Indian Penal Code, being Complaint Case No. 4285^C/2013 and pending in the Court of learned Sub-Divisional Judicial Magistrate-I, Kamrup (M) at Guwahati and issuing the process against the present petitioner is hereby set aside and quashed. However, it is made clear that the case against the other accused persons will continue in accordance with law.

19. Criminal proceeding accordingly stands disposed.

JUDGE

Comparing Assistant